



February 9, 2017

Ms. Christine Peterson
Director for Intellectual Property and Innovation
Office of the United States Trade Representative (USTR)
600 17th Street, N.W.
Washington, DC 20503

RE: Identification of Countries under Section 182 (Special 301) of the Trade Act of 1974.
Docket Number: USTR-2016-0026-0001

Dear Ms. Peterson:

On behalf of the American Apparel & Footwear Association (AAFA), I am submitting the following comments to the Office of the United States Trade Representative (USTR) in response to the request for public comments to compile the 2017 Special 301 report identifying countries that deny adequate and effective protection of intellectual property rights (IPR).

We are requesting an opportunity to testify at the March 8, 2017 hearing.

AAFA is the national trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, our membership includes 340 companies, drawn from throughout the supply chain. AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its four million U.S. workers, and its contribution of \$360 billion in annual U.S. retail sales.

We have compiled a detailed list of countries where systemic IPR enforcement problems exist and where IPR practices need to be improved. This submission also highlights some successes in countries where AAFA members have traditionally faced resistance to the protection of their brands. In addition, we have provided information related to difficult enforcement environments encountered with foreign internet registries. Sadly, with few exceptions, our assessment of foreign cooperation, enforcement, and legal regimes remains largely unchanged from 2016. That information is attached.

Attention to these issues supports U.S. apparel and footwear jobs, particularly since our members' competitiveness is highly dependent upon the protection of the intellectual property embedded in their designs, their brands, and their images. Footwear, apparel, and other fashion items top virtually every list of top counterfeited products and seizures.

But the victims of IPR theft stretch even further than the U.S. jobs that are lost due to foreign counterfeits. Facilities that make knock off shoes, clothes, and accessories do not typically meet the high standards or comply with the regulations upon which our members insist to ensure product safety, worker safety, and workers' rights. In addition to stealing the identity of world famous brands, counterfeiters put millions of workers in danger through substandard conditions while exposing consumers to unknown product safety risks. It is with this in mind that our joint efforts to remove counterfeits from the marketplace permanently, and to make sure they never get introduced into our supply chains in the first place, takes on heightened concern.

We appreciate this opportunity to raise these concerns and look forward to working with USTR and other U.S. government agencies to address intellectual property rights issues worldwide. We consider this to be an ongoing process and will provide USTR with updated comments on new issues as our members bring them to our attention.

Thank you for your time and consideration in this matter. Please feel free to contact me at (202) 853-9347 or slamar@aafaglobal.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Lamar", with a long horizontal flourish extending to the right.

Stephen Lamar
Executive Vice President

Attachment

Attachment

Cross Cutting Issue

Foreign Internet Registries

AAFA Recommendation: Highlight this problem

Counterfeiters are increasingly registering domains that advertise and sell counterfeit goods and infringe brand owner's trademarks, both in the domain name itself and in the content of the website. Many of these counterfeiters use a country code top-level domain (ccTLD) in order to avoid detection by United States brand owners and enforcement of United States court orders. Individual ccTLDs have varying requirements and fees for registering domains; however, most ccTLDs require that the website registrant be a citizen or have a registered office in the country in question and that the registrant provide true and complete contact information upon registration of a website. Most ccTLDs also have policies against cybersquatting.

Despite these registration requirements and policies, a number of foreign registries do not make registration information publicly available and do not provide information or assistance to brand owners whose intellectual property rights have been violated on a website using a ccTLD.

For instance, as of June 3, 2013, following a decision by the Swedish data protection authority, the Internet Foundation in Sweden, the registry for the Swedish ccTLD (.SE), no longer provides contact information for domain holders unless the holder of the domain name has approved publication. It is unlikely that a counterfeiter will approve publication of his/her contact information. There are more than 1.3 million registered .SE domains, an increasing number of which violate intellectual property rights. Yet there exists no mechanism by which rights holders can take down these domains. More importantly, the lack of publicly available information about the domain registrants makes it difficult, if not impossible, for brand owners to explore other alternatives. The Internet Foundation of Sweden also handles the operation and administration of the top-level domain .nu, an increasingly popular extension. Similar problems exist in other countries, including ccTLDs in Spain, Germany, Denmark, The Netherlands, China, and Switzerland.

We also note that many ccTLDs are not subject to ICANN consensus policies, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), adding another hurdle to enforcing intellectual property rights against bad actors in the ccTLD space. Although some ccTLDs have adopted the UDRP, or a UDRP-like dispute resolution process, as listed [here](#), other ccTLDs may require complex, costly and time-consuming efforts, including litigation, to disable or recover infringing domain names.

Country Specific Issues

Canada

The system established by the Canada Border Services Agency (CBSA) for the recordation of Trademarks and Copyrights remains confusing more than a year after implementation. As a result, many brand owners will not record their marks due to the long list of unknowns. While we understand some clarifications have been proposed/implemented, we have not heard any positive results from active brands. This situation will remain the case until CBSA can clarify the procedures for brand owners.

Members have reported difficulty getting the Royal Canadian Mounted Police active with respect to enforcement cases related to trademark and counterfeit violations.

China

While we have seen some improvement in China in terms of verbal communication between the Chinese government and entities in our industry in the past year, we continue to see a growth in the number of products and brands that are being counterfeited. We applaud the work USTR has done with our industry to address our concerns regarding counterfeit goods being sold on many China-based websites, which we continue to monitor in our notorious markets submissions.

Given the widespread proliferation of counterfeits on some Chinese ecommerce platforms, a fact documented by U.S. and Chinese government agencies, we remain concerned that draft e-commerce legislation pending in China may create less legal accountability and responsibility for these platforms. We believe extra efforts should be made to clean up these sites by establishing proper legal frameworks, clearly articulated responsibilities of the platforms, and more Chinese government oversight.

We also remain concerned over the lack of adequate protection in China for marks that are owned, used, and registered in many countries outside of China, but which are not recognized as well-known trademarks in China. Despite repeated efforts to change the policy, the fact remains that if another party files an application in China ahead of the actual owner of the mark, the legitimate brand owner is still left completely unprotected. Further, Chinese trademark law still does not recognize the use of a brand name on several different commodities. We are encouraged by efforts of the Chinese government to revamp its trademark law to address these problems. However, those efforts have been slow and have yet to bear fruit. Just as important, enforcement at the provincial level remains wildly inconsistent, and needs to be enhanced through increased police action and penalties.

Finally, as we have mentioned previously, we believe the U.S. Government should work with Chinese Customs to prevent fake goods from leaving China, especially in cases in which the legitimate versions of the product are not manufactured in China. We have previously suggested educational approaches that would resolve this very disconcerting problem. Education would also help make sure that China customs authorities do not detain legitimate goods, which members have reported with some frequency.

Costa Rica

AAFA members have cited uneven progress with respect to enforcement issues in Costa Rica. While some brands have had positive experiences in the past year, others have reported little change from the past, when a lack of coordination between the relevant government agencies and follow through mean inaction on many enforcement priorities. We hope to see further improvements in the coming year, especially since Costa Rica is an FTA partner.

Guatemala

Members report significant counterfeit garment production with an unorganized police, customs, and judiciary system to handle these cases. They have reported no success working enforcement cases in the past year, which is disappointing because Guatemala is an FTA partner. Members are restarting outreach given new leadership at police and customs agencies.

Honduras

AAFA members note the agreement that was reached last year with the U.S. government to bring about better cooperation from enforcement and prosecutorial officials. Some members have reported improved cooperation since then in training and seizures, and continue to work with officials in that country to determine if that progress will be sustained.

Indonesia

Members report that they are receiving little support from Customs, law enforcement, and administrative authorities regarding proposed raid actions. One member attempted but was unable to execute any successful raid actions in 2015.

Korea

In Korea, the refusal of the Korean trademark office to accept letters of consent can result in a situation in which a mark is deemed to be famous in Korea yet cannot be registered as a trademark. The refusal to register the mark as a trademark creates harm to the brand owner, as the lack of registration hampers the brand owner's ability to police its marks and to take action against counterfeiters. As a U.S. free trade agreement partner, Korea should be a leader in IPR issues.

Mexico

Problems with IPR protection are ongoing in Mexico, where counterfeit goods remain prevalent. Trademark registration is still a difficult process to navigate and recognition of common law trademark rights based on previous use is not consistent. We are hopeful this will improve quickly given Mexico's new commitments related to trademarks under the TPP.

Members have advised us that the Mexican customs authorities have been a strong partner in IPR enforcement in Mexico, and we saw several successful raids and seizures in past years. Member have also reported that the office of the attorney general and the Mexican Institute of Intellectual Property have also been helpful with

raid actions. They are concerned, however, that such cooperation is inconsistent, especially with leadership changes.

Philippines

The National Bureau of Investigation (“NBI”) and Intellectual Property Office of the Philippines (“IPO-PHL”) have improved greatly and our members have reported successful raid actions in the past two years. The main problem lies with the judiciary system, both with prosecutors and judges who are ineffective and create situations where all cases languish and solid cases are dismissed for no clear legal reasons. These avoidable delays exacerbate costs because companies have to pay storage fees for goods seized and have to fund legal work for prosecutors or that goes to waste because defendants often do not attend mandatory mediation (with no recourse). They also dis-incentivize companies to conduct raids since there is very little legal remedy.

Russia

AAFA members have continuously reported that they have received absolutely no support from Russian law enforcement when it comes to the protection and enforcement of their patents, trademarks, and copyrights. As a result, AAFA members, echoing concerns we understand are made by other industries, continue to face the persistent and growing threat of counterfeiting and piracy in Russia. Online piracy also continues to plague the Russian market and the government has failed to establish any sort of effective enforcement strategy to address the problem.

Thailand

Members have reported continued improvements in recent years. Although support from the Royal Thai Police and Royal Thai Customs in intellectual property enforcement cases increased, including several high profile raids, progress remains inconsistent. We are concerned that Thailand’s lack of attention to economic crimes will create an environment where counterfeit production and sales can flourish. Meanwhile, our continued concern with the Thai Trademark Registrar and the Board of Trademarks remains unchanged. Both organizations continue to focus on the visual and phonetic similarity comparisons between trademarks without regard to the conceptual similarity of marks and the possibility of bad faith intent by applicants. This practice has resulted in the registration of many trademarks likely to create consumer confusion with earlier-registered trademarks. The registration of copycat trademarks and trademarks filed in bad faith makes it increasingly difficult and costly for brand owners to successfully oppose and cancel these illegitimate applications and registrations.

Turkey

Turkey remains a European-Asian hub for the manufacture, export, and transshipment of counterfeits, particularly for apparel. In the past few years, members reported sporadic support and assistance from Turkish law enforcement in raids and seizures. On a less optimistic note, the judicial system, related to IPR matters, continues to remain inefficient and slow, with judicial remedies that do nothing to deter counterfeiters. Most cases spend years in the Court only to end up with suspended sentences. The Turkish government has not shown any seriousness to prioritize judicial IPR reforms that would bring them in line with other leading countries in the region.

Saudi Arabia

Members report “severe infringements” and erosion of brand identify in Saudi Arabia. Unfortunately, IPR enforcement is costly and difficult. Specific problems have emerged due to administrative burdens in launching raids and in follow up prosecutions. Among other things, companies targeted in raids have been allowed to continue to sell infringing products. Follow up information provided to support additional raids or enforcement actions is acted upon sluggishly, if at all. Members have reported concerns over the lack of protection for trademarks that are widely used in Saudi Arabia and used and registered in many other jurisdictions worldwide. Some Saudi courts appear to refuse to consider evidence of fame and reputation of a mark. Members also noted serious disparities in the trademark examination process. Without significant legislative changes to reform this system, IPR enforcement will remain challenging.

That said, members have reported that Saudi customs authorities have been helpful in identifying and detaining suspected counterfeits and knockoffs despite the fact that there is no system for trademark registration with Saudi Customs.

UAE

The design patent registration process in UAE has a processing timeframe of 3-5 years from filing to registration. As you are aware, the lifespan of most designs in this industry are also between 3-5 years. As such, the UAE design patent registration system is entirely unfeasible.

Ukraine

Members had reported very little cooperation from customs and enforcement authorities. The conflict with Russia has made this worse.

Venezuela

Reports from our membership have indicated that the Venezuelan customs service, SENIAT, made some successful counterfeit seizures over the past few years. However, the Venezuelan prosecutor’s office still takes years to adjudicate cases. The process is so slow and the penalties are so low that neither is effective to deter counterfeiters. Additionally, the Venezuelan Patent & Trademark Office (PTO) continued to fail to make improvements last year relating to the publication of trademarks applications. The office continued to publish applications for trademarks that are nearly identical to AAFA members’ marks. Also, the trademark opposition process is slow, ineffective, and sometimes impossible to obtain timely outcomes from the PTO.